IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9486 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DOLATSINGH ROOPSINGH JHALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9486 of 2004

MR FB BRAHMBHATT for Petitioner No. 1

Mr. KD Pandya, AGP for Respondent No. 1

MR MANISH J PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 25/08/2004

ORAL JUDGEMENT

Rule. Shri KD Pandya, learned AGP waives service of on behalf of respondent No.1 and Shri MJ Patel, ld. advocate waives service of Rule on behalf of respondent No.2. With the consent of parties the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and validity of the order passed by the Development Commissioner, State of Gujarat, Gandhinagar dated 1.7.222004 in permanently staying Resolution No. 492 dated 17th January 2004 passed by the Executive Committee of the District Panchayat, Sabarkanta.

3. It seems that tenders were invited by the Irrigation Department of the District Panchayat, Sabarkanta for 12 projects and the last date for submission of the tenders by the contractors was 13th January 2004. As it was found that there was a cartel found by the contractors and there is a mention about it in the tender which was found to be not proper there is likelihood of loss to the public exchequer which is not in public interest, the Executive Committee, Sabarkanta of District-Panchayat, Himatnagar passed a resolution No. 492 to cancel the tenders and inviting fresh tenders. The District Development Officer preferred appeal before the Development Commissioner and the Development Commissioner passed judgment and order dated 1.7.2004 permanently staying execution and operation of Resolution No. 492 dated 17th January 2004 passed by the Executive Committee of the District Panchayat, Sabarkanta by holding that the same is contrary to Rule 22 of the Gujarat Panchayat Rules. Being aggrieved and dissatisfied with the same, the petitioner had preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. The petitioner is a member of Executive Committee of the District Panchayat, Sabarkantha. Shri Brahmbhatt, learned advocate appearing on behalf of the petitioner has submitted that in view of the fact that the Resolution which was passed by the Executive Committee of the District Panchayat was in the interest of the District Panchayat and public at large in fact the District Development Officer should not have and ought not to have preferred an appeal which prima facie seems to be filed favouring the contractors who had found the cartel.

5. Notice came to be issued by this Court and the respondent No.2 District Development Officer was directed to inform this Court what prompted him to challenge the resolution passed by the Executive Committee of the District Panchayat of Sabarkanta and what prompted him to approach the State Government as it was found in fact the resolution which was challenged before the Development

Commissioner was in favour of the District Panchayat and public at large. In response to the notice issued by this Court, Shri Patel, ld. advocate appears on behalf of respondent No.2 and has submitted that in view of the fact that the Executive Committee of District Panchayat had no jurisdiction the appeal was preferred before the Development Commissioner. Be that as it may, the fact remains that the resolution which was passed by the Executive Committee of the District Panchayat appears to be in the interest of District Panchayat as it was found that the contractors have formed the cartel and have offered higher price for the construction, which was in the interest of District Panchayat and public at large and therefore it was decided to cancel the tenders and invite fresh tenders. In fact assuming that the Executive Committee was not having any jurisdiction, in view of the fact that the resolution was in favour of District Panchayat and it was not challenged by the contractors who had filled in the tenders making a grievance with regard to inviting fresh tenders the District Development Officer could not have and ought not to have challenged the resolution. In fact, considering the merits of the resolution and the intention and the consequences of the resolution, the Development Commissioner even should not have permanently stayed further implementation and operation of the resolution passed by the Executive Committee as by permanently staying the said resolution the illegal act of forming the cartel would have been restored.

6. Under the circumstances and for the reasons stated hereinabove and considering the resolution passed by the Executive Committee of the District Panchayat, Sabarkanta which appears to be in favour of District Panchayat and the allegation of forming of cartel by the contractors, the order passed by the Development Commissioner, State of Gujarat, Gandhinagar dated 1.7.2004, without entering into the larger question whether the Executive Committee was having jurisdiction or not, is hereby quashed and set aside and the decision taken by the Executive Committee of the District Panchayat inviting the fresh tenders is hereby restored. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

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